IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 628 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGWATIBHAI NARSINGHBHAI PATEL
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR NL PATEL for the Petitioner
MR AJ DESAI, ADDITIONAL PUBLIC PROSECUTOR for Respondent No.1
MR DM THAKKAR for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 10/10/2006

ORAL JUDGMENT

1. BY order dated 05.10.2006, Mr.A.J.Desai, learned Additional Public Prosecutor was granted time to place on record the compliance of the directions issued by this Court in order dated 19.07.2006.

Learned Additional Public Prosecutor has placed

order dated 09.10.2006 issued by the Director General of Police, State of Gujarat, Gandhinagar.

2. **RULE**. Mr.A.J.Desai,learned Additional Public Prosecutor waives service of Rule on behalf of respondent No.1. Learned advocate Mr.D.M.Thakkar waives service of Rule on behalf of respondent No.2.

3. Present is the application filed against order dated 05.05.2005 passed by the learned Chief Judicial Magistrate, Surat below Exh.3 in Criminal Case No.5613 of 2001, M.Case No.1 of 2001.

4. Mr.N.L.Patel, learned advocate for the petitioner submitted that a detailed application Exh.3 was submitted, wherein as many as 13 + 5 authorities were cited and as many as 21 documents were produced for the consideration of the learned Judge.

Mr.Patel submitted that originally, the land was bearing revenue survey No.250/1. It belongs to the petitioner herein. When the railway line going to Hazira Fertilizer Complex was lead, the land bearing revenue survey No.250/1 was divided into two parts, which were given Block Nos.490/A and 490/B.

5. It is the case of the petitioner that the pipeline was to be lead by respondent No.2 herein in the land of the petitioner for which, respondent No.2 had agreed to pay an amount of Rs.2,77,000/- as compensation.

Respondent No.2 paid only Rs.2,00,000/- and did not pay Rs.77,000/- Besides, there was damage caused to the crop of 'roses' and therefore, the petitioner was constrained to approach the Civil Court by filing Special Civil Suit No.364 of 1995 at Surat. By suppressing all these material, the complainant filed the complaint, in which this application Exh.3 was filed, seeking discharge.

6. Learned advocate Mr.Patel submitted that though it is a clear case involving a dispute of civil nature, but then, the learned Judge has not taken into consideration either the submissions or the documents produced and without taking into consideration the authorities cited before him, has rejected the application – Exh.3.

7. From the papers produced by Mr.Patel it is clear that the matter requires reconsideration by the learned Judge afresh. Hence, the order impugned, dated 05.05.2005 is quashed and set aside. The matter is remitted to the learned Chief Judicial Magistrate, Surat for deciding the same afresh after giving full opportunity of hearing to the parties and taking into consideration the documents produced by the parties. The application is allowed. Rule is made absolute.

(RAVI R.TRIPATHI, J.)

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